UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 10

IN THE MATTER OF: BLAIR WATERWAY TBT SITE Tacoma, Pierce County, WA	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR TIME CRITICAL REMOVAL ACTION
PORT OF TACOMA, Respondent	U.S. EPA Region 10 CERCLA Docket No. 10-2015-0069 Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Port of Tacoma ("Respondent"). This Settlement Agreement provides for the performance of a time critical removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the Blair Waterway TBT Site (the "Site") generally located at Pier 4 on the Blair Waterway in Tacoma, Pierce County, Washington.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). On April 20, 2013 this authority was further delegated (in R10-14-14-C) by the Region 10 Administrator to the Director of the Office of Environmental Cleanup, and then ultimately redelegated via R10-14-14-C(1) to the Emergency Management Program Manager.

3. EPA has notified the State of Washington (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent is responsible for carrying out all activities required by this Settlement Agreement.

7. Respondent shall provide a copy of this Order to each contractor hired to

perform the Work required by this Order and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors perform the work in accordance with the terms of this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on January 27, 2015, by the Regional Administrator, EPA Region 10, or his delegate, and all attachments thereto. The Action Memorandum is attached as Appendix B.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Ecology" shall mean the Washington State Department of Ecology and any successor departments or agencies of the State.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Access) (including, but not limited to, the cost of attorney time and any monies paid to secure access

including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 64 (Work Takeover), community involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV(Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site, all Interim Response Costs, and all Interest on those Past Response Costs Respondent has agreed to pay under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period prior to the Effective Date.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between April 30, 2014 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.

k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondent.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site prior to the Effective Date, plus Interest on all such costs through such date, but excludes costs paid by Respondent pursuant to Parties' Administrative Settlement and Order on Consent, CERCLA Docket No. 10-2014-0128, effective June 13, 2014.

o. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

p. "Respondent" shall mean the Port of Tacoma. Respondent's contacts are as follows:

For Technical Matters:
Scott Hooton
Port of Tacoma, Environmental Project Manager
PO Box 1837, Tacoma, WA 98401 – 1837
253-383-9428
shooton@portoftacoma.com

For Legal Matters:
Kimberly Seely
Coastline Law Group
4015 Ruston Way, Ste 200
Tacoma, WA 98403
253-203-6820
kseely@coastlinelaw.com

q. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

r. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

s. "Site" shall mean the Blair Waterway TBT Site, encompassing approximately 21 acres, located at Pier 4 on the Blair Waterway in Tacoma, Pierce County, Washington, and depicted generally on the map attached as Appendix A.

t. "Blair Waterway TBT Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

u. "State" shall mean the State of Washington.

v. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the time critical removal action, as set forth in Appendix C to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

w. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

x. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous substance" under Section 70.105D.010(10) of the Model Toxics Control Act ("MTCA").

y. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

EPA makes the following Findings of Fact, without any express or implied admissions of such facts by Respondent:

9. Respondent is owner of Pier 4, a deep water terminal located on the Blair Waterway in Tacoma, Pierce County, Washington.

10. In 2013, Respondent conducted sediment sampling events under and at Pier 4 pursuant to the Dredge Material Management Program ("DMMP"). This sampling was necessary to characterize sediments for purposes of a dredging project involving the reconfiguration of Pier 4.

11. Tributyltin ("TBT") is a hazardous substance as that term is defined under CERCLA, RCRA and MTCA, and constitutes waste material as defined in Section III.u above. TBT was encountered at levels exceeding the DMMP TBT screening level at some locations within or near the projected dredge prism. TBT at these levels may render approximately 40,000 cubic yards of sediments unsuitable for open water disposal or beneficial use.

12. To further investigate the presence of TBT at the Site, Respondent conducted investigation activities under an Administrative Settlement and Order on Consent, CERCLA Docket No. 10-2014-0128, effective June 13, 2014. Results of such activities were documented in a Removal Site Evaluation Report (RSER).

13. Based on findings documented in the RSER, EPA completed an Action Memorandum, executed on January 27, 2015, attached hereto as Appendix B and incorporated into this Settlement Agreement by reference. The Action Memorandum concludes that a Time Critical Removal Action is appropriate at this Site.

14. Project tasks conducted under this Settlement Agreement may be eligible for a remedial action grant through Ecology's grant program. Reimbursement eligibility for project tasks conducted under this Settlement Agreement is contingent upon the determination by Ecology's Toxic Cleanup Program that the work performed complies with the substantive requirements of Chapter 173-340 WAC and is consistent with the removal activities required under this Settlement Agreement.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal activities, EPA has determined that:

a. The Blair Waterway TBT Site is a "facility" as defined by Section 101(9) of CERCLA,42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1)..

e. The conditions described in Paragraphs 9-14 of the Findings of Fact above constitute an actual or threatened of "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

f. The conditions at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal activities required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

16. Respondent has retained, and EPA has not disapproved, Floyd/Snider Environmental Consultants to perform the Work with respect to drafting of planning documents. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 14 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of EPA's disapproval.

a. EPA recognizes that Respondent must select contractors pursuant to statutory requirements applicable to port districts set forth under Public Contracts and Indebtedness Title 39 RCW and Title 53 RCW. As such, if EPA disapproves of a selected contractor and Respondent cannot retain a different contractor within the required 30 days, upon proof of good faith effort by Respondent, EPA may extend this deadline by an additional 30 days.

17. Respondent has retained, and EPA has not disapproved the following individual as Project Coordinator, who shall be responsible for administration of all planning actions by

Respondent required by this Settlement Agreement: Ms. Jessi Massingale, PE, of Floyd Snider, 601 Union Street, Suite 600, Seattle, WA 98101, 206-292-2078, jessi.massingale@floydsnider.com. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 14 days following EPA's disapproval. Notice or communication relating to this Settlement Agreement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent. EPA and Respondent shall have the right, subject to Paragraph 16, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 10 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

18. EPA has designated Kathy Parker, of the EPA Region 10 Emergency Management Program Branch, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at USEPA Region 10, 1200 Sixth Ave., Suite 900, MS: ECL-133, Seattle, WA 98101. Respondent shall submit one paper and one electronic copy of all plans, reports, or other deliverables required by this Settlement Agreement, the Statement of Work, or any approved work plan. All data evidencing Site conditions shall be submitted to EPA in electronic form. Sampling and monitoring data contained in any deliverables must be submitted in CLP-type Electronic Data Deliverable ("EDD") format.

19. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

20. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work. The actions to be implemented generally include, but are not limited to, the following:

a. Preparation of a Removal Action Work Plan, including a schedule and work to be performed to accomplish the removal action. The Removal Action Work Plan shall include as appendices: 1) a Water Quality Monitoring and Protection Plan; 2) a Dredge Water Treatment Compliance Sampling Plan; and 3) a Post-Dredge Confirmation Sampling Plan and associated Health and Safety Plan.;

b. Implementation of the Time Critical Removal Action consistent with the Removal Action Work Plan; and

c. Preparation and approval of a Time Critical Removal Action Report, which summarizes work performed, monitoring and confirmational sampling conducted, and provides waste disposal documentation.

21. Work Plan and Implementation.

a. Within 30 days after the Effective Date, Respondent shall submit to EPA for approval the draft Removal Action Work Plan for performing the removal action generally described in Paragraph 20 above, and detailed more specifically in the SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 14 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Upon approval of the Removal Action Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement.

d. Unless otherwise provided in this Settlement Agreement, any additional plans, reports, or other deliverables that require EPA approval under the SOW or Removal Action Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

22. Health and Safety Plan. Prior to starting construction/dredging work, Respondent's contractor shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent's contractor shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

23. Quality Assurance Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. In accordance with the Post-Dredge Confirmation Sampling Plan, Respondent shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement Agreement perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)," and any amendments made thereto during the course of the implementation of this Settlement Agreement. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (a) quality assurance/quality control ("QA/QC") criteria are contained in the method(s) and the method(s) are included in the QAPP, (b) the analytical method(s) are at least as stringent as the methods listed above, and (c) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ANSI/ASQC E-4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American National Standard, and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

c. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement Agreement.

e. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes and regulations.

24. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until issuance of Notice of Completion of Work pursuant Section XXVI, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit one paper and one electronic copy of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan.

25. Final Report. Within 90 days after completion of all Work required by this Settlement Agreement, other than continuing obligations required by Paragraph 94 (Notice of Completion), Respondent shall submit for EPA review and approval the Time Critical Removal Action Report summarizing the actions taken to comply with this Settlement Agreement. The Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The Report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

a. Interim Approval of Dredging Completion. EPA recognizes that this Time Critical Removal Action is part of a larger construction project involving the realignment of Pier 4. To further continuation of the construction project and avoid delay, EPA agrees to issue a Memorandum to the Port stating that the dredging work has been completed to EPA's satisfaction, although such Memorandum shall in no way compromise EPA's rights under Sections XIX (Reservation of Rights by EPA), XXVI (Modification), XXVIII (Additional Removal Action), or XXVII (Notice of Completion of Work) of this Settlement Agreement.

IX. ACCESS

26. If the Site, or any other real property where access and/or land, water, or other resource use restrictions are needed, is owned or controlled by Respondent:

a. Respondent shall, commencing on the Effective Date, provide the United States and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Settlement Agreement including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 64 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);

(9) Assessing Respondent's compliance with the Settlement Agreement; and

(10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement.

27. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts, Respondent is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs incurred, direct or indirect, by the United States in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration, in accordance with the procedures in Section XV (Payment of Response Costs).

28. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, MTCA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

29. Respondent shall provide to EPA, upon request, copies of all records, reports, documents and information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

30. Privileged and Protected Claims.

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 30.b and except as provided in Paragraph 30.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidence conditions at or around the Site; or

(2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement Agreement.

31. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which

Respondent assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

32. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, MTCA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

33. Until 10 years after EPA provides Respondent with notice, pursuant to Section XXVI (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement Agreement, Respondent shall preserve and retain all non- identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner its liability under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary. As used herein, Respondent's obligation to "possess" and "retain" may include Respondent's records storage at a secure off site location. As used herein, Respondent's obligation to "possess" and "retain" may include Respondent's records storage at a secure off site location.

34. At the conclusion of the document retention period, as described in Paragraph 33 herein or such longer period as may be required under applicable law, Respondent shall notify EPA at least 90 days prior to the destruction of any Records, and, upon request by EPA, and except as provided in Paragraph 30 (Privileged and Protected Claims), Respondent shall deliver any such records or documents to EPA.

35. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927 and State law.

XII. COMPLIANCE WITH OTHER LAWS

36. Nothing in this Settlement Agreement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

37. Emergency Response. In the event any action or occurrence during performance of the Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at the Region 10 Emergency Management Program Branch at (206) 553-1264, and the EPA National Response Center at (800) 424-8802, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

38. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (206) 553-1264, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq*.

XIV. PAYMENT OF RESPONSE COSTS

39. Payment of Response Costs. Respondent agrees to pay Past and Interim Response Costs not previously billed under the Administrative Settlement and Order on Consent, CERCLA Docket No. 10-2014-0128, effective June 13, 2014. Respondent shall also pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 60 days after Respondent's receipt of each bill requiring payment

40. Method of Payment.

a. Payment shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference the name and address of the party making the payment as well as the Site/Spill ID Number 10MY and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that payment has been made to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 10MY and the EPA docket number for this action.

41. Interest. In the event that payment of any (Past, Interim or Future) Response Costs are not made within 60 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII.

42. Respondent may submit a Notice of Dispute, initiating the procedures of Section XV (Dispute Resolution) regarding payment of any (Past, Interim or Future) Response Costs billed under Paragraphs 39 and 40 if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such Notice of Dispute shall be submitted in writing within 60 days of receipt of the bill and must be sent to the OSC. Any such Notice of Dispute shall specifically identify the contested Past, Interim or Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 60-day period pay all uncontested Response Costs to EPA in the manner described in Paragraph 40. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the

identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 40. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 40. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Past, Interim or Future Response Costs.

XV. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

44. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, excluding billings for Past, Interim or Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 30 days of such action. If Respondent objects to EPA action taken related to billing for Past, Interim or Future Response Costs, it shall send such notice within 60 days, consistent with Paragraph 42, above. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement.

45. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Director of the EPA Region 10 Office of Environmental Cleanup will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

46. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Settlement Agreement, not directly in dispute, unless EPA provides otherwise in writing. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 55. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any

applicable provision of this Settlement Agreement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

47. "Force Majeure" for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, or increased cost of performance.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Emergency Management Program Branch, EPA Region 10, within 72 hours of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 47 and whether Respondent has exercised its best efforts under Paragraph 47, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

49. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify

Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

50. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 47 and 48. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement Agreement identified to EPA.

XVII. STIPULATED PENALTIES

51. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 52 and 53 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all payments and activities required under this Settlement Agreement, or any plan, report, or other deliverable approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans, reports, or other deliverables approved under this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

52. Stipulated Penalty Amounts – Work (Including Payments and Excluding Plans, Reports, and Other Deliverables.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other deliverables, or any noncompliance identified in this Paragraph:

Penalty Per Violation Per Day	Period of Noncompliance
$200.00	1st through 14th day
$500.00	15th through 30th day
$1,000.00	31st day and beyond

b. Compliance Milestones

(1) Failure to timely submit modifications requested by EPA or its representatives to the draft Work Plan;

(2) Failure to timely submit payment for Past, Interim or Future Response Costs required by Paragraphs 39 and 40;

(3) Failure to obtain insurance as required by Paragraph 82; and

(4) Failure to comply with any schedule in the EPA-approved Work Plan.

53. Stipulated Penalty Amounts – Plans, Reports, and Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to this Settlement Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
$100.00	1st through 14th day
$250.00	15th through 30th day
$500.00	31st day and beyond

54. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 64 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $20,000.00.

55. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: a) with respect to a deficient submission under Paragraph 21 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and b) with respect to a decision by the Director of the Office of Environmental Cleanup for Region 10 of EPA, under Paragraph 45 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order.

56. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

57. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 39 (Payment of Response Costs).

58. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations

upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), provided however, that the EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of a willful violation of this Settlement Agreement.

59. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

60. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. COVENANTS BY EPA

61. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon receipt by EPA of the payment due under Section XIV (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties due thereon under Paragraph 41(Interest) or Section XVII (Stipulated Penalties). These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Past, Interim or Future Response Costs pursuant to Section XV. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

62. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

63. The covenants not to sue set forth in Section XVIII (Covenants by EPA) above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past, Interim or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;

g. liability for violations of federal or state law that occur during or after implementation of the Work; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement Agreement.

64. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent and assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 45.

XX. COVENANTS BY RESPONDENT

65. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2),

107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Washington State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, or Future Response Costs.

66. Except as provided in Paragraph 69 (Claims Against De Micromis Parties), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 63.a (liability for failure to meet a requirement of the Settlement Agreement) or 63.d (criminal liability), but only to the extent that Respondent's claim arises from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

67. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

68. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans, reports, other deliverables or activities.

69. Claims Against De Micromis Parties. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

70. The waiver in Paragraph 69 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines: (a) that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or (b) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXI. OTHER CLAIMS

71. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

72. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

73. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

74. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

75. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Past, Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Past, Interim or Future Response Costs.

76. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

77. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants By EPA).

78. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payments required by Section XIV (Payment of Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 75 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

79. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or

subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

80. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

81. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

82. At least 14 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of $3.5 million dollars, for any one occurrence, and automobile insurance with limits of $1 million dollars, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. Within the same time period, Respondent shall provide EPA with certificates of such insurance no later than 14 days prior to commencing on-Site work, and a copy of each insurance policy as soon as it becomes available. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date, or as soon as they become available thereafter. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

83. In order to ensure completion of the Work, Respondent shall establish, maintain, and submit to EPA financial assurance, initially in the amount of $18,500,000.00 (the "Estimated Cost of the Work"), for the benefit of EPA. The financial assurance, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Respondent intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds, letters of credit, trust funds, and insurance policies).

a. A surety bond that provides EPA with acceptable rights as a beneficiary thereof unconditionally guaranteeing payment and/or performance of the Work;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee acceptable in all respects to EPA;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof, is issued by an insurance carrier acceptable in all respects to EPA, and ensures the payment and/or performance of the Work;

e. A demonstration by Respondent that such Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) and this Section are satisfied; and/or

f. A written guarantee to fund or perform the Work executed in favor of EPA provided by one or more of the following: (1) a direct or indirect parent company of Respondent, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) and this Section with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee).

84. Within 30 days after the Effective Date, Respondent shall submit all executed or otherwise finalized mechanisms or other documents required, to Kathy Parker, US EPA Region 10, 1200 Sixth Street, M/S ORC-113, Seattle, WA 98101.

85. If Respondent provides or obtains financial assurance for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 83.e or 83.f, Respondent and/or its guarantors shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Settlement Agreement, and with the requirements of this Section, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief

financial officer and independent certified public accountant to EPA no later than 30 days after the Effective Date; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days after any such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year for which the year-end financial data show that such entity no longer satisfies such financial test requirements. Respondent agrees that EPA may also, based on a belief that the relevant entity may no longer meet the financial test requirements of this Section, require reports of financial condition at any time from the relevant entity in addition to those specified in this Section. For purposes of the financial assurance mechanisms specified in this Section, references in 40 C.F.R. Part 264, Subpart H to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall also include the Estimated Cost of the Work; (2) "the sum of current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental obligations" (including obligations under CERCLA, RCRA, EPA's Underground Injection Control program, 40 C.F.R. Part 144, enacted as part of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2695d, and any other federal, state, or tribal environmental obligation) guaranteed by Respondent or for which Respondent is otherwise financially obligated in addition to the Estimated Cost of the Work to be performed in accordance with this Settlement Agreement; (3) the terms "owner" and "operator" shall be deemed to refer to Respondent obtaining a guarantee or making a demonstration under Paragraph 83.e or 83.f; and (4) the terms "facility" and "hazardous waste management facility" shall be deemed to include the Site.

86. Respondent shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines and so notifies Respondent, or Respondent becomes aware of information indicating, that financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondent shall notify EPA of the inadequacy within 30 days and, within 30 days after providing to or receiving from EPA such notice, shall obtain and submit to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies the requirements set forth in this Section. If EPA approves the proposal, Respondent shall provide a revised or alternate financial assurance mechanism in compliance with and to the extent permitted by such written approval and shall submit all documents evidencing such change to EPA pursuant to the delivery instructions in Paragraph 81 within 30 days after receipt of EPA's written approval. In seeking approval for a revised or alternate form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 88. If EPA does not approve the proposal, Respondent shall follow the procedures set forth in Paragraph 88 to obtain and submit to EPA for approval another proposal for a revised or alternate form of financial assurance within 30 days after receipt of EPA's written disapproval.

87. The issuance of a Work Takeover Notice pursuant to Paragraph 64 (Work Takeover) shall trigger EPA's right to receive the benefit of any financial assurance(s) provided pursuant to this Section. At such time, EPA shall have the right to enforce performance by the issuer of the relevant financial assurance mechanism and/or immediately access resources guaranteed under any such mechanism, whether in cash or in kind, as needed to continue and complete all or any portion(s) of the Work assumed by EPA. In the event (a) EPA is unable to promptly secure the resources guaranteed under any such financial assurance

mechanism, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA, or (b) the financial assurance involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 83.e or 83.f, Respondent shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA. All EPA Work Takeover costs not paid pursuant to this Paragraph shall be reimbursed under Section XIV (Payment of Response Costs). In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance mechanism it has issued, then, unless Respondent provides an alternate financial assurance mechanism in accordance with this Section no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance.

88. Respondent shall not reduce the amount of, or change the form or terms of, the financial assurance until Respondent receives written approval from EPA to do so. Respondent may petition EPA in writing to request such a reduction or change on any anniversary of the Effective Date, or at any other time agreed to by the Parties. Any such petition shall include the estimated cost of the remaining Work and the basis upon which such cost was calculated, and, for proposed changes to the form or terms of the financial assurance, the proposed revision(s) to the form or terms of the financial assurance. If EPA notifies Respondent that it has approved the requested reduction or change, Respondent may reduce or otherwise change the financial assurance incompliance with and to the extent permitted by such written approval and shall submit all documents evidencing such reduction or change to EPA pursuant to the delivery instructions in Paragraph 40 within 30 days after receipt of EPA's written decision. If EPA disapproves the request, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution), provided however, that Respondent may reduce or otherwise change the financial assurance only in accordance with an agreement reached pursuant to Section XV or EPA's written decision resolving the dispute.

89. Respondent shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section until: (a) Respondent receives written notice from EPA in accordance with Paragraph 94 that the Work has been fully and finally completed in accordance with this Settlement Agreement; or (b) EPA otherwise notifies Respondent in writing that it may release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution), and may release, cancel, or discontinue the financial assurance required hereunder only in accordance with an agreement reached pursuant to Section XV or EPA's written decision resolving the dispute.

XXVI. MODIFICATIONS

90. The OSC may make modifications to any plan, schedule, or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

91. If Respondent seeks permission to deviate from any approved work plan, schedule, or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 90.

92. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTION

93. If EPA determines that additional removal actions not included in the Removal Work Plan, or other approved plan are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with Section VI (Settlement Agreement and Order), EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

94. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

95. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no

representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Appendix A (Site Map), Appendix B (Action Memorandum), and Appendix C (Statement of Work).

XXX. EFFECTIVE DATE

96. This Settlement Agreement shall be effective on the day the Settlement Agreement is signed by the Regional Administrator or his delegate.

The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party he represents to this document.

Agreed this 5TH day of February, 2015

for Don Esterbrook

John Wolfe,
Chief Executive Officer
Port of Tacoma

It is so ORDERED and Agreed this 6 day of February, 2015

BY: _____ DATE: 2/6/15

Chris Field
Program Manager

Emergency Management Program
Region 10
U.S. Environmental Protection Agency

EFFECTIVE DATE: 2/6/15